IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13308 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUO MOTU - Petitioner(s)
Versus
STATE OF GUJARAT & 31 - Respondent(s)

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Appearance :

SUO MOTU for Petitioner(s) : 1,
MR DIPEN DESAI, AGP for Respondent(s) : 1 - 6.
MS PAURAMI B SHETH appointed by the Court
MR CZ SANKHLA for Respondent(s) : 1 - 2, 29,
NOTICE SERVED for Respondent(s) : 7, 17, 27,
MR JITENDRA MALKAN for Respondent(s) : 7,
MS AMRITA M THAKORE for Respondent(s) : 8,
MR MAULIN R RAVAL for Respondent(s) : 9,
MR HS MUNSHAW for Respondent(s) : 10, 14,18 - 19.
MR PRANAV G DESAI for Respondent(s) : 11,
NOTICE NOT RECD BACK for Respondent(s) : 12,20 - 21, 28,
MR RM CHHAYA for Respondent(s) : 13,
MR AR THACKER for Respondent(s) : 15,
MR PREMAL R JOSHI for Respondent(s) : 16,
MR JR NANAVATI for Respondent(s) : 22,
MR AMIT M PANCHAL for Respondent(s) : 23,
MR PRASHANT G DESAI for Respondent(s) : 24,
MR NIKHILESH J SHAH for Respondent(s) : 25,
MR JASWANT K SHAH for Respondent(s) : 26,

None for Respondent(s) : 30,
MRS SHILPA R SHAH for Respondent(s) : 31,
GIRISH PATEL ASSOC for Respondent(s) : 32,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/04/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. The advent of sophisticated automobile technology, introduction of easy loan facility, the availability of wide range of motor vehicles and the increase in urban population, have all contributed in taking the number of vehicular accidents and the resultant fatality and the injuries to an alarming proportion during recent times. At one point of time, though the motor cars were available at a lesser price than the prevailing, their users were less since during those days motor cars were not easily available, the range of motor cars was also very limited and there was hardly any loan facility available to the people. However, the time has now changed. The judicial notice also can be taken of the fact that the finance to purchase motor vehicles has become easily available, and there is growing tendency in the public at large to avail such facility, even at the cost of substantial cut in the monthly expenditure, which have brought tremendous increase in motor vehicles of different makes and kinds in the urban areas. The cities like Ahmedabad, Surat, Vadodara and

Rajkot in Gujarat seem flooded with motor vehicles of all categories. It is also a matter of grave concern that unlike the days not very far in the past, the students have taken fancy for motor vehicles and especially the two wheelers and it is also noticed that even the parents nurture such craze by buying vehicle for the children even when they have not become eligible to hold licence under the Motor Vehicles Act [hereinafter referred to as ' the MV Act'] and the Motor Vehicles Rules [hereinafter referred to as 'the Rules'] framed thereunder. The temptation on the part of the users of such sophisticated vehicles to drive their vehicles at the speed much in excess to the desired or reasonable speed on the public roads has become a major problem not only for the law enforcing agency but even for the citizens. The public safety today is in the doldrums. Almost every day more than one fatal accident in one part or the other of the State have been occurring either on the Highways or in any of the major cities or in rural area. There are different types of vehicular accidents in which the citizens lose their lives or sustain serious injuries. The accidents resulting due to collision between two vehicles, vehicle turning turtle on account of excessive speed are common so far four wheelers are concerned. Whereas fatal accidents of two wheelers are concerned, they are very common because of slipping of the vehicles. So far accident resulting due to collision between two vehicles is concerned, death is caused due to serious injuries suffered by the inmates of the vehicles on account of the impact; whereas the riders of two wheelers sustain

serious head injuries on account of their heads banging against the road with force causing brain haemorrhage. Apart from this, pedestrians also get killed because of vehicles running over them. The nature of accidents has remained the same over the years, but now the number of accidents has gone up phenomenally on account of the factors stated above. It also appears that for various reasons the number of vehicular accidents is not being brought under control. It may be stated here that the legislature has taken care of the hazards posed by the motor vehicles and to impose adequate control over it, it has enacted the M V Act. In the said Act various measures have been prescribed whereby the legislature has tried to regulate the vehicular traffic, to avoid or to minimize vehicular accidents, to safeguard the environment and to ensure public safety. Inspite of that the number of vehicular accidents has reached to such proportion that as if these provisions do not exist at all.

2. Way back in the year 1995 this Court had felt the urgent need to curb the danger posed to the public safety and had taken serious note of the total failure of the Government and the traffic police to control and minimize the number of road accidents. It had also felt then that it was absolutely necessary for this Court to ensure the public safety and to issue appropriate directions to the Government and to the police to implement the provisions of the M V Act, with all earnestness and to book the defaulters for committing the offences

under the M V Act as also the Penal Code. It therefore, had initiated suo-motu proceedings in the nature of public interest litigation and issued notices to various authorities responsible for the implementation of the provisions of the M V Act. The Court even at that time had felt it necessary to reduce the amount of pollution caused by the motor vehicles and, it had given its thoughtful consideration to this major issue related to the traffic. It appears that even earlier to this, public body named Lok Adhikar Sangh had approached this Court by filing Special Civil Application No. 8061 of 1992 in the nature of public interest litigation praying for issuance of appropriate direction on the traffic manning agencies. The Division Bench of this Court by a common CAV Judgment dated 22nd February, 1999 gave detailed directions to various authorities mainly with a view to see that the provisions of the M V Act are implemented by the concerned agencies effectively and efficiently with a view to regulate the traffic properly, minimize the vehicular accidents and control the pollution caused by the use of vehicles.

3. Almost 10 years thereafter, we have felt that the labour put in and the exercise carried out by this Court earlier has gone in vain since the Government and the concerned agency, namely the police of the Traffic Branch have completely ignored these directions and have given undesired latitude to the motor vehicle owners to drive their vehicles in a manner they like, totally

disregarding the provisions of law. The situation has deteriorated considerably now for the factors stated above. For this very reason, it was at this time, almost a year and a half back, we again decided to take up the issue of public safety by initiating suo-motu proceedings in the nature of public interest litigation, which can more or less be termed as continuation of earlier proceedings. Our anxiety on this issue has been adequately narrated by us in our order dated 11th October, 2004. The said order is required to be reproduced verbatim, which is as under :-

"CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of Order: 11/10/2004

ORAL ORDER

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. With the growing number of vehicular accidents in the city of Ahmedabad and other parts of the State, it has become a matter of grave concern of not only the Government, law enforcement authority but also of every citizen. Safety of the citizen is of paramount interest. Unfortunately the same is being overlooked by all concerned and the provisions relating to vehicular traffic are being flagrantly violated. For example the Sarkhej Gandhinagar Highway was not having heavy vehicular traffic some years back but with the lifting of ban on construction on the green belt, number of commercial buildings,

restaurants, clubs, religious temples and educational institutions have come up, not to ignore this Court. That has increased the vehicular traffic especially in the form of two wheelers and private cars substantially. This is over and above the continuous flow of heavy vehicles since this road serves link between South Gujarat and North Gujarat and further also State of Maharashtra in south and Rajasthan and onwards in the north. This road which was formerly known as highway, has now become S.G. Road and it has become one of the busiest roads of the city. Judicial notice can also be taken of the fact that on this road vehicular accidents at the rate of once a week or even more are taking place and many of them fatal. Similar is the situation of different areas in the city since the number of vehicles has increased by leaps and bounds during the recent years and with the sophistication in the machinery, both in two wheelers as well as four wheelers, to drive the vehicle with excessive speed has become craze with vehicle owners. In the process safety of the citizens is being completely disregarded. Almost every day there is news reporting of fatal accident having occurred in the city as well as in the other parts of the State including the Highways. This Court by judgment rendered in the case of Suo Moto v/s. Secretary Home Department dated 22/02/1999 in Special Civil Application No. 9988 of 1995 and cognate matter has given its anxious consideration to this grave problem.

2. This Court in those proceedings has identified the gray areas in traffic management and has issued directions as also recommendation in VII different parts including formation of committee of experts to make a detailed study and submit its report to this Court. Various aspects relating to vehicular traffic like safety, pollution, etc.

have been incorporated. Some of the items can be stated as under :-

* Overall measures to minimise Road Accidents within the Cities/Townships and on Highways

* Suggesting general corrective measures on the Roads within City/Townships qua existing traffic junctions, signals, islands, barricades, etc. along with such suggestions for future planning of better Roads/Highways.

* Patrolling by police on Highways to check the speed, licence status and P U C of all the vehicles.

* Curbing the menace of "Driving by Drunk"

* Suggesting of the change in Road Pattern on Highways and in City/Townships in and around the "Accident Zones"

* Establishment of Mobile Medical Units for rescue, immediate treatment and transit of the injured.

* Implementing the existing Law -Rules and suggesting other and further law-rules for ensuring for front Lamp Lights on bicycles, and back lights and reflectors on the back of all automobiles and all man and cattle pulled/pushed vehicles.

* Compulsory provision of providing reliever driver in all heavy vehicles, including State Transport and Private Buses making night

journey.

* Compulsory wearing of helmet both by the Driver and Pillion Riders on all types of two wheelers.

3. Report of the Experts' Committee has been duly received. In the said report several important remedial measures have been suggested by the Committee. It, however, appears that all this has remained on paper only. There is no strict implementation of the same. Judicial notice can be taken of the fact that traffic police is completely oblivious to what is happening around them. The heavy vehicles in the form of State Transport Buses, the private Transport Buses, the Trucks have converted the Highways into death trap. Situation of the local traffic in different cities is also very grim. This Court cannot become silent spectator to all this.

4. Hence, the Registry of this Court is directed to issue notice returnable on 25th October, 2004 to the Director General of Police, State of Gujarat the Commissioners of Police of the cities of Ahmedabad, Vadodara, Surat, Rajkot and the Secretary, Ministry of Home Affairs, to appear before this Court and to state what measures are being taken to avert or minimize the number of vehicles or accidents in this city as well as in other parts of the State and whether recommendations of this Court as well as those made in the Report of the Experts' Committee are being implemented. The Registry is also directed to give number to this proceedings and place it before the regular Court taking up PIL matters along with the record of aforesaid petitions."

4. In this background, we have again closely examined this issue.

4.1. At this juncture, we may refer to certain provisions of the M V Act and also the Rules.

Section 2 of the Act gives definitions of various terms.

* Section 2 (34) of the Act defines "public place". It means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers picked up or set down by a stage carriage.

* Section 2(35) of the Act defines "public service vehicle". It means any motor vehicle used or adapted to be used for the carriage of the passengers for hire or reward and includes a maxicab, motorcab, contract carriage and stage carriage.

* Section 65 of the Act empowers the State Government to make less and by virtue of it, the State is authorized to make rules for the purpose of carrying into effect the provisions of Chapter (IV), which pertains to Registration of Motor Vehicles.

Chapter VIII of the Act deals with Control of Traffic.

* Section 112 of the Act is in relation to the limits of speed. Sub-section (1) of Section 112 of the Act states that no person shall drive the

motor vehicle or cause or allow a motor vehicle to be driven in any public at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under the Act. Sub-section (2) of the Act empowers the State Government or any authority authorized in this behalf by the State Government, if satisfied that it is necessary to restrict the speed of motor vehicles in the interest of public safety or convenience because of the nature of any road or bridge, by Notification in the Official Gazette, and by causing appropriate traffic signs to be placed or erected under Section 115 at suitable places, fix such maximum speed limits or minimum speed limits as it thinks fit for the motor vehicle.

* Section 115 of the Act deals with the Power to restrict the use of vehicles.

* Section 116 of the Act deals with the Power to erect traffic signs.

* Section 118 of the Act authorizes the Central Government to frame driving Regulations.

* Section 119 of the Act prescribes that every driver of the motor vehicle shall obey the traffic sings and drive his vehicle in conformity with the driving Regulations.

* Section 135 of the Act authorizes to frame schemes for investigation of accident cases and wayside amenities etc.

* Section 137 of the Act empowers the Central Government to

make rules with regard to provisions contained in Chapter VIII i.e., provisions with regard to control of traffic.

* Section 138 of the Act empowers the State Government to make rules with regard to provisions contained in Chapter VIII i.e., provisions with regard to control of traffic.

Chapter XIII of the Act deals with the Offences, Penalties and Procedures.

* Section 177 of the Act deals with general provision for punishment of offences. It provides for imposition of penalty on the person contravening the provisions of the Act, for the first offence to the extent of Rupees One hundred and for second offence to the extent of Rupees Three hundred.

* Section 179 of the Act deals with disobedience of orders, obstruction and refusal of information. It empowers the authority to impose fine on the defaulter, which may be to the extent of Rupees Five hundred.

* Section 183 provides for penalty to be imposed on the person driving a motor vehicle at excessive speed. Excessive speed means more than the speed limit prescribed under Section 112 of the Act. For the first default the fine can be to the extent of Rupees Four hundred and thereafter for subsequent defaults fine to the extent of Rupees One thousand.

* Section 184 of the Act empowers the authority to impose fine on the person driving the motor vehicle dangerously.

* Section 192 of the Act deals with imposition of penalty on the person using vehicle without registration.

* Section 195 of the Act deals with imposition of minimum fine under certain circumstances.

* Section 201 of the Act deals with imposition of penalty for causing obstruction to free flow of traffic.

4.2. Thus, it can be seen that the provisions of the Act by themselves are sufficient to form the requisite machinery and confer powers on the members of the Police force and the transport authorities to control and regulate the traffic in a proper manner so that no vehicle used in a public place causes any danger to the public in any form. The Government is also saddled with statutory duty to provide for the necessary set-up, frame rules and maintain overall supervision to give effect to these provisions to ensure public safety and to control pollution caused by the motor vehicles. The Government has power to constitute appropriate force for the enforcement of these provisions. In other words, the Government has power to create machinery for the implementation of the provisions of the M V Act and the Rules for the aforesaid purposes. The

Government is also, under the Constitution, required to shoulder the responsibility to safeguard the public interest. Thus, the Government has power and duty to see that the provisions of the M V Act are properly complied with and when it has been provided with adequate machinery for the said purpose, namely, the police force, it has to take every possible step to ensure public safety. Any connivance or negligence on this aspect would render the Government not only answerable to public but also answerable to the Court of law.

4.3. It may further be noted here that the public safety is one of the important aspects of the fundamental right as provided in Chapter III of the Constitution of India. Article 21 deals with right to life. Public safety falls within the ambit of Article 21 as right to life includes safe life. Thus anything which endangers or impairs, due to conduct of anybody, either in violation or in derogation of laws, the quality of life and living of the people as envisaged under Article 21, it is the duty of the concerned authority to prevent such violation or breach of law. It is, therefore, the bounden duty of the Government, the Police Force and the Transport Authority, all of which are clothed with ample powers by M V Act to control and regulate the traffic in an appropriate manner so that no vehicle being used in a public place causes any danger to the public in any form. When this duty is over-looked by these agencies, the Court

can certainly intervene and issue appropriate directions requiring them to enforce the provisions of the M V Act and also direct them to protect the fundamental right of the public at large. The Court can also interfere if there is a clear violation of constitutional or statutory provisions or non-compliance by the State of its constitutional or statutory duties. Since this Court has found that there is public danger and public wrong caused by the omission of the State or Public Authorities to efficiently discharge their duties, it has treated these proceedings in the nature of public interest litigation.

4.4. Keeping the aforesaid aspects in view, the Court, during the course of hearing, explored the grey areas again and also made exercise to ascertain the shortcomings of the Government, the Police Force and the Regional Transport Authority. At that time it was found by it that unauthorized encroachments on the public roads created major problem for the smooth flow of the traffic. It also came to the notice of this Court that in the earlier proceedings the Expert Committee was directed to examine issue with respect to wearing of head-gear [hereinafter referred to as 'helmet'] which was under active consideration of the Government as per Expert Committee's report, and subsequently the Government has also thought it fit to implement strictly the provisions of section 129 of the M V Act. It has then further noticed that the Government has taken some steps in the direction of the implementation of the

said provisions and with respect to users of two wheelers on the Highways the wearing of helmet by Notification dated 31st August, 2004 has been made compulsory. However, though the rules are framed for compulsory wearing of helmet in city and town areas, its implementation has been suspended for sufficiently long time by granting extension. This Court has also noticed that local authorities are granting permissions with respect to dispensing with parking areas in the buildings. This Court, therefore, felt need to issue immediate directions after ascertaining the grey areas with a view to see that things are amended immediately, hence by order dated 9th May, 2005 this Court issued following direction :-

> "4.1. All encroachments which are on public streets or which are on highways should be removed immediately. Due care should be taken to see that the encroachments which are made near corners of the roads or near the traffic junctions or traffic circles should be removed as soon as possible so as to see that such area of the road is made available for use of vehicular traffic and not for encroachers."
>
> 4.2 Necessary direction for ensuring parking of vehicles in a particular manner should also be given to the police authorities. It should be seen that vehicles are parked absolutely away from the centre of the road so that more portion of the road is available for vehicular traffic. Any person parking a vehicle in an irregular manner, which is near the centre of the road or parked in an irregular and careless manner which obstructs the vehicular traffic, should be

strictly dealt with in accordance with law. For the aforesaid purpose also, the police inspector of the concerned area should be made responsible.

4.3. Similarly, it shall be ensured by the concerned police Inspector that there is no parking within reasonable distance from the junctions of public streets, where relatively traffic is heavy. It should be seen that vehicles are not parked within a particular distance from traffic junctions and traffic circles, and boards indicating such restrictions of parking should be properly displayed.

4.4. It is directed that the public bodies, which are responsible for giving sanction to building plans, should not dispense with the provisions with regard to providing parking place in residential and commercial complexes.

4.5. It shall also be ensured by the police officers in charge of Highway Patrolling that vehicles which are not 'Motor vehicles', such as bullock carts, camel carts, cycles etc., which are moving on the Highways are having reflectors so that at night such vehicles are noticed by drivers of other vehicles. They shall also see that the provisions with regard to the Act and rules made thereunder with regard to parking lights and reflectors are strictly enforced. They shall continuously monitor and ensure that the vehicles have proper reflectors and/or parking lights.

4.6. It shall also be ensured that any vehicles parked at night on highways keep their parking lights on. Strict action should be taken

in accordance with law if vehicles are found to have been parked on highways at night without parking lights on.

4.7. The State shall direct the concerned authorities, including the police authorities, to see that the provisions of sec. 129 of the Act, with regard to wearing of head gears [helmets] are strictly enforced. It may not be possible for the State to implement the said provision immediately, as the said provision is not being strictly enforced at present. It is therefore directed that due publicity shall be given by the State to the provisions of section 129 of the Act that while driving two wheelers, both, the driver as well as the pillion rider should wear head gear. After due publicity, with effect from 1st June 2005, the government authorities shall become strict with regard to enforcement of the said provisions. Necessary directions in this behalf shall also be given to the police force so that they may also ensure that the drivers and pillion riders of two wheelers comply with the said requirement of wearing headgears.

4.7.1 We have been informed by the learned Assistant Government Pleader that at present the provisions with regard to use of head gear [helmet] are strictly followed in respect of two-wheelers which are driven on Highways. We see no reason for not enforcing the said provisions even in the city/town limits because sec. 129 of the Act does not provide that the said provisions should be made applicable only to those who are driving two wheelers on Highways. We, therefore, direct the Government authorities to see that the provisions of sec. 129 are enforced properly.

4.8. The State is directed to consider whether sufficient number of policemen are allocated to the traffic branch in all major cities for regulating and monitoring vehicular traffic. If the strength of policemen working in traffic branch is not adequate, needful shall be done to increase the strength of policemen, working in traffic Branch so as to see that the accidents are avoided by proper regulation of traffic.

4.9 We also feel that wherever it is possible to have separate lanes for slow moving vehicles including two wheelers, three wheelers and fast moving four wheelers, appropriate arrangement shall be made by drawing lines for having separate lanes for different vehicles so that smooth movement of traffic can be ensured.

5. xxx xxx xxx xxx

6. The State shall give due publicity to the contents of this order so that more safety measures can be taken even by people themselves so that occurrence of accidents can be avoided."

4.5. So far the encroachment on the public roads is concerned, in the major cities, it is found that the main hindrance in the smooth flow of the traffic is also being caused by encroachers in the form of street vendors/hawkers. Keeping this in view, this Court has issued notices to various Municipal Corporations to give them appropriate direction to tackle this problem. The learned counsel for the Ahmedabad Municipal Corporation, on 3rd August, 2005, brought to our notice the scheme evolved by the Ministry of Urban

Development and Poverty Alleviation, New Delhi, known as National Policy on Street Vendors, which is framed with the purpose of regulating street vending activity which has in the recent days become major source of making purchases by the public. The counsel apprised the Court that in accordance with the scheme, the Corporation now intends to create different vending zones in the City of Ahmedabad to provide the street vendors to carry on their activity and also to see that the people do not face any problem either in the smooth flow of traffic or in conveniently making purchases. In the recent affidavit filed on behalf of the Corporation, some details have been given about the steps taken in this direction by the Corporation. We will, however, give final direction on this line at the appropriate stage.

4.6. So far implementation of section 129 is concerned, the directions which are final in the nature given by this Court in the order dated 9th May, 2005 have not been challenged before the Apex Court. Further at some point of time during the course of hearing which took place after the summer vacation of 2005, it was brought to the notice of the Court that the time limit prescribed by the Court for the implementation of the said law up to 30th June, 2005 was not possible since the number of helmets required for this purpose was quite large and the helmets were not available in market in adequate number. Considering the difficulty of the Government, it was granted time upto 31st

August, 2005 to take appropriate steps for the procurement of adequate number of helmets and directed it to implement the law from 1st September, 2005. This order dated 15th June, 2005 was passed on the Misc. Civil Application No. 1104 of 2005 filed by the State Government. Subsequently the Government came with yet another Civil Application being Misc. Civil Application No. 1724 of 2005 whereby it again brought to the notice of the Court the difficulty regarding the paucity of helmets in the market. This Court passed order dated 7th September, 2005 and extended the time limit upto 30th November, 2005. It was, however, made clear to the Government that in major part of the State the people themselves had started complying with section 129 and if such extensions were granted, the users of two wheelers would not take the matter seriously and there would be large scale violation of the rule and the directions of the Court. The Court also made it clear that no further extension would be granted. The Court also orally directed the Government to shoulder the responsibility of procuring helmets for the members of the public and to regulate the sale of it through a Government Agency with a view to see that unscrupulous traders did not exploit the situation to their advantage. The Ld. Government Pleader, during the course of hearing advanced oral submissions to the effect that if phase-wise implementation of section 129 was permitted by the Court, it would facilitate the Government to procure adequate number of helmets and it would be in a position to implement the law more effectively.

However, the Court showed its disinclination to accede to the request of the Government. It may be noted here that on 24th August, 2005 the Government issued notification making the helmet compulsory for the riders of two wheelers.

4.6.1. It appears that against the order dated 7th September, 2005, the Government of Gujarat went to the Apex Court by filing Petition for Special Leave to Appeal [Civil] No. 23993 of 2005. In the said petition, the Government made the following prayers :-

> "Main prayer :
> It is therefore most respectfully prayed that this Hon'ble Court may be graciously pleased to :-
> a) Grant Special Leave to Appeal against the impugned final judgment and order dated 7/9/2005 passed by the High Court of Gujarat at Ahmedabad in Civil Application No. 1724 of 2005 in Misc. Civil Application No. 1104/2005 in Special Civil Application No. 13308/2004;
>
> Prayer for Interim Relief :
> It is therefore most respectfully prayed that this Hon'ble Court may be graciously pleased to :-
> a) Grant ex-parte ad-interim stay of the impugned final judgment and order dated 7/9/2005 passed by the High Court of Gujarat at Ahmedabad in Civil Application No. 1724/2005 in Misc. Civil

Application No. 1104/2005 in Special Civil Application No. 13308/2004;"

The Apex Court, upon hearing the counsel for the Government, made the following order :

"The Special Leave Petition is dismissed."

In view of the aforesaid, the directions given by this Court with regard to compulsory implementation of section 129 of the M V Act and the Rules have virtually become final, duly approved by the Apex Court.

4.6.2. It may be stated here that there was considerable resentment in the public to comply with section 129 of the M V Act and public demonstrations in certain parts of the State were also made to register the protest against implementation of section 129 of the M V Act. We may make it very clear that this Court is not entertaining any desire or intention to cause harassment to the public at large. However, when the law is there and when it is enacted for the safety of the people, it has to be implemented and it is the pious duty of the Court to give directions to the appropriate authority to see that such law is implemented strictly and efficiently. The Court cannot afford to be oblivious to the number of fatal accidents occurring on the road on account of the head injuries sustained by the riders of two wheelers. In most of the cases, the

victims are young and even in several cases the college going students. The Bombay High Court, in similar circumstances, thought it fit to give appropriate directions to the concerned authorities to compulsorily implement the law regarding helmet, in a decision rendered in the case of Free Legal Aid Cell [NGO] v/s. Government of Maharashtra reported in AIR 2005 Bombay 271, has held as under :-

> "... These provisions have been incorporated for the benefit, welfare and the safe journey of the driver and pillion-rider of a two wheeled vehicle. Wearing Helmet helps the driver to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury, if any accident takes place. State and the Helmet Manufacturers Association directed to inform them that they must wholeheartedly support this piece of legislation. In view of the non-availability of Helmets, this law would be made applicable in the State of Maharashtra in a phased manner. The provisions of the Act shall be strictly implemented in the entire State of Maharashtra from 1st July, 2005. These provisions have been incorporated for the welfare and benefit of the public at large. Therefore, it is all the more essential that these provisions have to be strictly implemented in the larger interest of public. The State also undertakes to paste notices at the prominent places in the city that it is compulsory to wear helmets and non-compliance of the Act would result in imposition of fine and prosecution."

It has also observed as under :-

"18. It is not in dispute that the law enacted by Parliament requires compulsory wearing of protective headgear by every person driving or riding a two wheeler in a public place. Admittedly, the first proviso does not apply as its application is limited to a person who is a Sikh and that too if he is wearing a turban. True it is that the language of the second proviso to Section 129 is very wide and enables a State Government to make rules providing for such exception "as it may think fit". In the opinion of the Division Bench , it cannot be urged that such power can be exercised for any and every purpose. It is settled law that whenever power has been conferred on an authority which can be exercised by such authority as it thinks fit or as it deems fit, such power has to be exercised legally, properly and reasonably.

19. It may be pertinent to mention that a Committee constituted by the State of Maharashtra to make recommendations for effective implementation of road safety and management submitted its report on 3rd April, 2002. The Committee observed that the provision for making use of helmets should be made compulsory, taking into consideration the safety of the concerned driver of a two wheeler and pillion rider under the Act. Even though the use of helmet cannot prevent an accident from taking place, it can certainly reduce the intensity of the impact to the head in case of one. It was also observed during discussions with manufacturers of helmets that there are no difficulties to manufacture and supply helmets conforming to the specifications of the Bureau of Indian Standards. Also the cost of the same should be affordable to common people, taking into consideration its necessity from the point of view of safety of the user."

In view of the aforesaid, this Court has felt that it is in the larger interest of the public that strict implementation of such provision has to be there. In the case of M C Mehta v/s. Union of India reported in (1997) 8 S.C.C. 770 the Apex Court has held that the provisions of the Act have to be so construed as to keep individual or a class interest subordinate to the larger public interest. It is, therefore, hoped that the authorities concerned would adequately give positive publicity to such provisions of the Act and educate the people to comply with such laws, which are meant for their own safety.

4.7. Initially, the matter was heard by us on 8th March, 2006 and subsequent dates. On 22nd March, 2006 the arguments were treated to be concluded and thereafter the matter was kept for pronouncement of judgment. Subsequently, a note for listing the matter for pronouncement of judgment was also sent to the Department. However, on 19th April, 2006 the Registry placed this matter for hearing, and not for pronouncement of judgment. We, therefore, gave additional opportunity to the State Government on the aforesaid date and asked learned Additional Advocate General, Mr. Kamal B Trivedi, to remain present and point out the views of the State Government on the subject. Mr. Kamal B Trivedi submitted that since Special Leave Petition against the interim order of the High Court is dismissed by the Hon'ble Supreme Court, the State Government has decided to implement the interim order, and, as a matter of

fact, it has also issued a notification in this behalf. He further submitted that the State has decided to implement the law regarding helmet. He submitted that the State is in favour of implementing the same for ensuring the safety of riders of two wheelers. The said submission of Mr. Kamal B Trivedi, Addl. Advocate General is also noted. Mr. Trivedi further submitted that now there is no going back on this issue so far as the State is concerned, and hence it should implement the law in earnest. Even if there is some grievance or unrest amongst some section of the society or from the persons residing in villages or small towns or aged persons, it is for the State to consider if any representation is received in this behalf and take steps it may deem fit. By this judgment, we are only asking the Government to implement the law which is in force and not beyond that.

4.8. We would also like to point out that various organizations are straightaway writing letters to the Judges of this Court expressing their difficulties in the matter of wearing helmet. The practice of writing letters directly to the Judges, especially when the matter is subjudice, is highly deprecated. Such representations ought to have been made to the State Government and not to the Court directly. We again make it clear that by this judgment, we are merely asking the Government to implement the provisions of law as it stands today and we are just reminding it that it is the duty of the

Government to implement the law and not beyond that.

4.9. It may also be noted here that during the course of hearing of this petition, it was brought to the notice of the Government that though the Apex Court has issued direction with regard to fastening of seat belts by the occupiers of the front seats including the driver of motor car since long, it was not at all being complied with in the City of Ahmedabad, leave apart the other parts of the State and the Court also expressed its displeasure for the indifferent attitude on the part of concerned authorities and to take stern action against the persons violating the direction. It was only thereafter, adequate publicity appears to have been given by the Government regarding fastening of the seat belts and to penalise the person violating this direction. It also appears to us that such action on the part of the Government, though delayed, has resultant effect.

4.10. It also came to the notice of this Court that so far City of Ahmedabad is concerned, it has grown much beyond the limits of the Ahmedabad Municipal Corporation in all directions and the road running between Sarkhej and Gandhinagar, which was sometime back essentially and in true sense of the term a highway, has now been converted into one of the busiest city roads of Ahmedabad. Of-course, till this date, it has remained in the category of Highway and it is under the National Highway Authority, but

manned by the Government of Gujarat. However, when it came to the notice of this Court that on account of road being a Highway, no measures to check the speed of the vehicles plying on it could be taken and as a result of the same, it had turned into accident zone causing loss of valuable human lives, most of them being of the riders of two wheelers, it thought it desirable to issue certain immediate direction to apply some brake on the indiscriminate speeding of vehicles on this road. The Court has directed the authorities to create speed breakers in the form of rumble strips at each major cross road junctions of this road. That has been done and apparently number of such accidents has gone down considerably, as reported to us by National Highway Authority. However, certain other directions and/or recommendations have also been either given or made, to which we will refer little later. With regard to the Highways forming part of the road net-work of the State we have called upon the Government to place before us the measures taken by it to minimize the road accidents and also the measures taken by it to provide immediate medical help to the victims of vehicular accident. In response to the same, our attention has been drawn to the affidavit filed by Shri Chandravadan V Trivedi, Deputy Secretary, Home Department, wherein it is stated that entire net-work of the Highways forming part of the State territory has been divided into 7 units. The details of the units have been given in the said affidavit. It is further stated that these units of the Highways were within the jurisdiction of State Traffic Branch [' STB' for short],

which was formed by the Government Resolution dated 29th August, 1962, but later on the STB was discontinued from 23rd November, 2000. However, the Government has now taken decision to restart it and has incorporated a proposal for creating 157 new posts in the budget for the year 2006-07. For monitoring the observation of the prescribed speed limit drivers of the vehicles on these Highways, the Government has approved the proposal of the Police Department for purchasing seven new Radars, one for each unit and also tenders have been invited for purchase of two Traffic Interceptor Vehicles. According to the Police and the Government, this arrangement should take care of the necessity of preventing reckless and negligent driving and to monitor the speed limit. However, it appears to us that there are two problems in this, firstly, that there is no speed limit still prescribed for the Highways for different kind of vehicles and second is that considering the length and the nature of Highways and the heavy traffic on them, the aforesaid arrangement will not prove to be adequate and to curb the menace of reckless driving, the Police will have to install stationary Radars at different points at regular interval.

4.11. One of the major difficulties that has been projected by the Police Department before us is that there is paucity of police force considering the population and the large areas of the cities and that has become a major handicap for the police to cope up with traffic problem. It is also stated before

us that the requisition for augmenting the police force for the Traffic Branch is already made long back to the Government, but the Government is not taking any decision in this behalf. Of-course it is now brought to our notice that the Government has granted approval for requisitioning the services of Home Guards to assist the Police Department and that too in the Traffic Branch. But that should not dissuade the Department from resorting to the process of recruitment expeditiously and it can even pressurize the concerned agency to see to it that the vacancies are filled in without any delay.

4.12. During the course of hearing it has also come to our notice that there are large number of vacancies in the Department which are required to be filled in. Those posts are already sanctioned by the Government and they are existing in the Department. The Police Department, therefore, should take up the process of filling up these vacancies expeditiously. It is no use saying that the process is dependent on the other agencies. When the need is there, it should be provided with adequate means and certainly when the public safety is at stake, no delay whatsoever should be caused either for one or the other reason. The process of recruitment and filling up the vacancies should be taken up without any delay. We may, however, state that though the difficulty appears to be genuine, but that should not come in the way of the police for effective controlling and regulating the traffic since the police can, till such time

the force is augmented, take services of personnel of Home Guards or even private citizens who can adequately and efficiently assist the police in manning the traffic. In doing so, the Department should accept the reality and should not be diffident in calling for their services. In the case of M C Mehta v/s. Union of India [supra] the Apex Court has discussed this aspect and observed as under:-

> "13. It is also to be noted that to overcome the situation when the strength of the police force is not adequate in a given area and the utilisation of more men is required for strict enforcement of these salutary provisions, the law confers power of delegation of the authority to other persons. We are conscious of the fact that the inadequacy of personnel and other infrastructure may be a constraint which has impeded strict enforcement of these provisions so far. We have no doubt that after this clarification made by us in this order, the authorities concerned would mobilize the needed support by delegation of these powers to other authorities/officers and if need be even to responsible members of the public so that the resource crunch or inadequacy of infrastructure is not an impediment in enforcement of the law and the directions given today to obtain the desired results. No doubt, it is for the Government to make a realistic assessment of the strength of police force and Transport Department force to meet the felt need in this behalf but we consider it expedient to add that to overcome that deficiency/inaction, this order is to be construed as empowering the existing authorities to delegate their authority, wherever permissible under the law, to responsible persons in the manner they deem fit in the circumstances. In view of the urgency of implementation of these measures, we also make

it clear that for the purpose of such delegation to responsible persons chosen even from the public, these authorities would not suffer from any constraint and this order is sufficient empowerment to them in this behalf notwithstanding any administrative orders imposing any impediment or constraint on them, if any."

4.13. The State Government, which is responsible for the maintenance of the Highways forming part of the State and the local bodies for the city roads, should observe the proper road pattern since it is reported to us that on account of plantation grown in the middle of the road to serve not only as the divider but to add beauty to the road and to prevent dazzling of eyes, sometimes block the view at a point from where the vehicle on the left is required to go to the road on the right side from the gap between two dividers. Hence such plantation should be removed at-least upto 10 to 15 mtrs. from both the sides so as to make the view clear. Similarly at the cross road junctions also the road should cut each other at the right angle so as to make the crossing of the road by vehicles safe and avoid any accident happening on this count. Unless it is absolutely necessary, as far as possible the creation of island or the plantation at such spot should not be created.

4.14. So far Sarkhej – Gandhinagar Highway [S G Road] is concerned, there are two other measures which can be taken to reduce the load on it. The Ahmedabad Urban Development Authority [AUDA] under which the sides of

this road fall, has been given direction by us to create service roads on both the sides. We have also directed it to construct these roads in such a manner that at-least the two wheelers can safely make use of this road and avoid using the S G Road. Pursuant to our direction, the construction of these roads has already commenced, but the difficulty that has come to our notice, on this road, which is constructed in part, is that the show room owners of cars, theatre owners permit parking or themselves park their vehicles on these roads making them completely unusable for the purpose of driving. AUDA should see to it that such encroachment is removed forthwith and in the process even if the help of the police is required, it should take it. The second measure is to prohibit plying of heavy vehicles on this road. We have already suggested the concerned authority to take appropriate steps in this behalf. It is reported to us that the concerned authority had invited objections from the public for issuing notification prohibiting plying of heavy vehicles between the point known as Vaishnodevi Circle upto Sarkhej village. However, we direct the authority to see to it that such prohibition is imposed at-least from 15th May, 2006. The traffic of heavy vehicles can be diverted on the 200 ft. road known as Sardar Patel 200 ft. Ring Road. Of-course Ring Road is also required to be kept safe for driving. Hence, the concerned authority, namely, the AUDA is also directed to create at-least rumble strips at the cross road junctions which are prone to accidents and to create speed breakers on the approaching roads. It should also

display adequate sign boards indicating existence of speed breakers in the form of rumble strip and even install the yellow blinkers to caution vehicular traffic approaching the spot at night.

4.15. The Government brought to our notice that a Committee has been formed by it on 8th December, 2004, which would explore and examine all the aspects relating to the vehicular accidents on the Highways and to provide immediate medical help to the victims. It was also stated in the affidavit dated 13th December, 2004 that the said Committee would prepare report within three months from the said date incorporating the measures recommended by it. However, till October 2005 no such meeting of the Committee was held leave apart the preparation of the report. This Court, therefore, made strict observations in this behalf in its order dated 19th October, 2005 and the Government assured the Court that the meeting would take place at the earliest and the report would be prepared. In pursuance of the said assurance, the Committee has convened its meeting and determined the certain measures vide report dated 8th December, 2005, which is annexed with affidavit of Mr. KD Suthar, Under Secretary, Home Department, dated 16th January, 2006. The recommendations pertain to the medical aid to be provided to the victims of the accident. The measures suggested by the Committee, in our opinion, are absolutely essential for saving the lives of victims of the vehicular accidents on

the Highways. Hence, in our opinion all these recommendations are required to be implemented by the Government.

4.16. So far the Express Way running between Ahmedabad and Vadodara is concerned, it has come to our notice that though for the commuters on it speed limit is prescribed and adequately displayed at different spots, the same is not being observed by them. For the light vehicle, the speed limit is 100 KMs, whereas for the heavy vehicles, it is 80 KMs per hour. Often it is found that there is complete violation of this direction and the vehicles especially the light ones are being driven at much excessive speed than the limit prescribed for them. That is causing accident. This is also required to be monitored. It is the function of the State Government. It is, therefore, for the State Government to implement the observation of speed limit by the vehicle owners. No steps seem to have been taken by the Government on this line. Such over-speeding is required to be scrupulously checked by closely monitoring the movements of the vehicles and when the defaulters are found, they should be adequately penalized for the same.

4.17. The next major issue before us is the safety of the school children who are being carried in vehicles known as auto rickshaw and Maruti Van. These are two popular modes of transporting children to the school in the major

cities of the State. It transpires that for Maruti Van, there are no rules or regulations and except for registering the Van as transport vehicle, the owner of such Van is not bound by any special provision to ensure safety of the children and to charge reasonable and proper fee from the parents of such children. It is also brought to our notice that though there are certain rules framed for the auto rickshaw, they have never been implemented or observed by the owners of such vehicles. This has resulted into overcrowding of these vehicles and children with their legs dangling or keeping their heads outside the body of auto rickshaw, has become a common scene. Such dangerous traveling of the children is required to be curbed. The safety of the children is paramount. However, certain other aspects are also required to be kept in view while directing the Regional Transport Authority to frame certain rules in this behalf. The Government has stated before us that now the circulars with regard to school rickshaws and Maruti Vans vis-a-vis number of students to be carried in them are issued and for rickshaw the number is restricted to six children and for Maruti van 12 children. This is seriously opposed by the Association represented by Mr. Girish Patel. He has submitted that this will not only bring about the cut in the income of the vehicle owners substantially, but it may also cause additional financial burden on the parents. We have given our careful consideration to both these aspects as well as aspect of safety. It appears to us that some relaxation in that number is required to be given. In our opinion, two

more children upto the age of 12 years can be permitted in school rickshaws and two to three more children can be permitted for the Maruti Vans. Of-course ultimate decision on this count will be of the Government since the safety of the children is of a paramount interest. Simultaneously the Government may also explore the possibility of giving some concession to such vehicles for converting them in the taxis, making loans available for purchasing CNG vehicles on easy instalments, etc.

It is also necessary that these vehicles should be registered as a special category with the Regional Transport Office and they should comply with the appropriate directions meant for such category of vehicles. The Regional Transport Authority should also, before registering vehicle in such category, examine the credential of the owner as well as the driver to be employed on such vehicle from the view point of their driving history and if it is apparently found that their credential are bad, the registration should be refused.

5. In our order, which is quoted above, we have detailed certain grey areas indicated by this Court in its judgment dated 22nd February, 1999. These areas are grey areas even today. Of course, the Division Bench, then, had taken the position of the traffic on roads, Highways, National Highways and the State

Highways existing at that time into consideration. It had also kept in view the population, the number of vehicles and different categories of the vehicles existing then. At this juncture, we may like to quote a paragraph from the decision rendered by the Division Bench in the case of Ahmedabad Municipal Corporation v/s. Vijay Owners' Association reported in 2000 (3) G.L.H. p.510. The said decision, however, was essentially in relation with the unauthorized and illegal constructions made in the City of Ahmedabad, but while discussing the aspect of making provision for parking space in the buildings the Division Bench had an occasion to gather the details about position of the motor vehicles, the traffic, the public roads, etc., in the City of Ahmedabad. This passage will give an idea about the pace at which there is increase in the number of vehicles in the City, the capacity of the people to purchase vehicles and the growth in population. This situation gives the picture prevailing in the second half of 90s of the last century and it appears to us that the pace has not deceased but on the contrary it has increased. The passage is as under :-

> "30. So far as the parking arrangement is concerned, strict compliance is absolutely necessary. In the year 1997, with the Regional Transport Office, Ahmedabad, 9,18,589 vehicles were registered till July 1997. Thereafter, number of vehicles are registered with the RTO. Considering the population of the Ahmedabad for every four persons, there is one vehicle. Obviously that would require sufficient place for parking also. Over and above these vehicles, there are thousands of visitors to the city

every day who are coming in their own vehicles or by hired vehicles. Number of transport buses, regularly operate in city by Ahmedabad Municipal Corporation not only within the city limits but within larger area covered under Development Act. Approximately 50,000 autorickshaws are operating providing quick transport service. Transport buses are operated by private transporters from various parts in the city. Over and above this, State Road Transport Corporation operates buses from congested area of the city which are passing through various roads of the city. Their frequency/ trips have also increased. All these aspects were required to be taken into consideration. Looking to the fast development and need of the people vehicles are increasing every day in the city. In view of expansion of city, and considering distance and time use of vehicles has increased a lot. On account of blessings of the concerned department, even some residential buildings are permitted to be used as office complexes without prior approval, without providing parking. Office complex is occupied by many people and the premises are to be visited by number of people which would lead to abnormal movement of traffic and that really cause the problems for the residents of Ahmedabad. Neither police is able to manage nor the Corporation is able to manage in this regard.

5.1. For this purpose we have also now reassessed the situation in light of the changes that have taken place over the years in the pattern of the highways, other roads, city public roads, growth in population and also increase in the number of vehicles and we have now thought it fit to give certain more directions in this judgment which may either pertain to the grey areas indicated

in the order or for the issues for which we have also found certain directions necessary. With the passage of time, certain fresh issues have come to our notice such as safety of school children in auto-rickshaws and Maruti vans; traffic on Express Way; feasibility of monitoring the compliance of Section 129 by the District Judges etc.

6. As stated above, since we found that the provisions of the Act as well as Rules framed thereunder were not being complied with strictly by the police as well as transport authorities and the Government, we have decided to initiate these proceedings and now we issue the following directions with a view to see that these provisions of the Act and the Rules are implemented strictly by the concerned authorities so as to minimize the road accidents and ensure public safety. In aforesaid background, we now propose to give following directions in addition to the directions given by this Court vide order dated 22nd February, 1999 and 9th May, 2005 :-

(1) The members of the police force, the transport authorities and the Government are directed to strictly implement the provisions of the M V Act and the Rules with a view to see that the number of road accidents is minimized.

(2) The state Government is directed to issue necessary notifications determining the speed limit for the highways forming part of the road network of the State on or before 30th June, 2006 and to display at regular interval on the highways the speed limit.

(3) To monitor the traffic and see that the prescribed speed limit is not exceeded by the users of the high-ways and for this purpose the authorities shall maintain the latest equipments such as radars, interceptor van, etc.

(4) On the express-way, at the toll collection booths traffic police be posted in aid of the guards employed by National Highway.

(5) The Government and the Police Department shall take expeditious steps to fill up the existing vacancies in the police department *vis-à-vis* the Traffic Branch and till such vacancies are filled up, the police shall utilize the service of the force like home-guards to assist them in regulating the traffic.

(6) Wherever there is plantation on the road dividers at the spot where there is a gap between two dividers to enable the traffic to cross over

the road, at such point the plantation to be removed upto a distance of 10 to 15 mtrs. on both the sides of the dividers to make the view clear.

(7) The cross roads on the Highways should be at the right angle of each other.

(8) The Principal District Judges of the State to monitor implementation by the authorities of the provisions of the M V Act and in particular implementation of provisions of Section 129 of the M V Act, namely wearing of helmets by riders of two wheelers. For this purpose the Principal District Judges will be at liberty to constitute appropriate Committee. They shall furnish periodical reports at the end of every four months to this Court and the Registry is directed to place the reports on the record of this petition, for one year from the date of this judgment.

(9) The State Government and the Police Department are also directed to submit their report to this Court regarding the compliance of the aforesaid directions on or before 31st July, 2006. The Registry is directed to place these reports on the record of this petition. As and when the same are filed, the Registry is further directed to place these reports for our perusal.

(10) The Government shall frame rules regarding carrying the school

children in auto rickshaws, maruti vans and also create a separate category for these vehicles for the purpose of registration in the RTO.

(11) The RTO to grant permission only after verification of the credentials of the drivers as well as the owners *vis-à-vis* his driving history. The Department of the Education to monitor the record maintained by all schools in pursuance of its Circular with regard to the vehicles carrying the students.

(12) The Government to implement recommendations and measures suggested by the Committee in its report dated 8th December, 2005 as expeditiously as possible and in any case, not later than 31st July, 2006.

(13) The Municipal Corporations of the State to give effect to the national policy on the Street Vendor as early as possible and in any case not later than 30th September, 2006. The Director of the Municipalities to see to it that this direction of the Court is complied with by the Corporations and for that purpose necessary Notifications/ Circulars be issued within reasonable time.

(14) The State Government and the Central Government are directed to install traffic signals on the S.G. Road as per the decision taken in this behalf by the State and Central Governments on or before 31st July, 2006.

(15) The AUDA is directed to create rumble strips on 200 ft. Ring Road known as Sardar Patel Ring Road at cross road junctions and sign boards displaying speed breakers should be installed on conspicuous places as also yellow blink light to give indication about the cross roads and the rumble strips.

(16) The AUDA is directed to remove all the encroachments that may have been caused on the service roads on both sides of S G Highway forthwith.

(17) The concerned authority to issue notification on or before 31st May, 2006 so as to divert the heavy vehicles coming from Gandhinagar on S G Highway at Vaishnodevi Circle to 200 ft. Sardar Patel Ring Road and vehicles approaching from Sarkhej side from the Sarkhej Circle to the said Ring Road so as to prevent plying of heavy vehicles between Sarkhej and Vaishnodevi Circle except for making entry in the city from the approach road between the Ring Road and the S G Highway.

(18) The State as well as the Police to give wide publicity to the medical aid post and places situated in the vicinity of that area for obtaining medical help and to give details of their telephone numbers.

(19) To establish police force on Express Way with modern equipments to monitor the traffic and compliance of prescribed speed limit.

6. Apart from the above directions, there are certain aspects where this Court would not like to issue any direction but only make suggestions or recommendations for the consideration of the appropriate authority and if found proper and feasible, to take appropriate action on it :

1. Raising the height of the barricade on both the sides of the Express Way so as to prevent the residents of villages situated on either side of the road from crossing the road.

2. To consider the demand of School Rickshaws and Maruti vans Owners Association to increase the number of school children at-least by two.

3. To give tax benefit to the owners of such vehicles.

4. To grant loan on easy instalment and easy rate of interest to owners of school rickshaws and school vans for converting the vehicles in CNG.

5. To increase amount of fine for violation of provisions of section 129 of the M V Act.

6. To purchase more modern equipments for regulating and monitoring traffic on the Highways and the Express Way.

7. The Guards employed on the Express Way to be provided with means of communication with police to notify any breach of the traffic rules on Express Way by the vehicle owners.

We therefore, direct the State of Gujarat and Chief Secretary to ensure that the contents of this order are suitably publicised in print as well as the electronic media. Such publication would be sufficient public notice to all concerned for due compliance.

7. We would also like to make it clear that so far as the encroachment aspect is concerned, we have dealt with the same only to a limited extent of encroachments on roads and highways insofar as it obstructs the traffic. This order should not mean that this Court has expressed any opinion that all encroachments wheresoever which is found to be on Government land or land belonging to local civic body is to be removed, nor should it be construed that this Court has given any direction to remove the hutments, etc., or even any person who has put up any structure as per the licence or permission granted by the Government or local bodies should be removed straightway without following due process of law. On this aspect, this Court is not required to say anything in this matter. We make it clear that by this order, we have not pronounced that all encroachments whatsoever should

be removed immediately as we are not required to decide the said question in this matter. The Government or local civic body should, therefore, refrain from exploiting this judgment to get rid of the encroachment even when such encroachment does not fall within the ambit of this judgment.

7.1. We make it clear that the authorities should comply with the directions in this judgment in its true spirit and non-compliance of the directions contained in this judgment would amount to disobedience of the order passed by this Court, which may expose them to facing proceedings under the provisions of the Contempt of Courts Act.

By this judgment we terminate this suo-motu proceedings.

8. Before we part with the judgment, we put on record our appreciation for the services rendered by the learned counsels Mr. Dipen Desai, AGP, Ms. PB Sheth, Mr. Maulin Raval, Mr. Khare and Mr. Munshaw for the assistance rendered to us in this matter. We also direct the State Government, the Ahmedabad Municipal Corporation and the AUDA to deposit Rs.10,000/- [Rupees ten thousand only] each in the Registry on or before 2nd May, 2006 to meet the expenses of this proceedings. The Registry is directed that upon deposit of the said amount, Rs.25,000/- [Rupees twenty five thousand only] to

be paid to Ms. PB Sheth, learned advocate towards the remuneration for the services rendered in this matter, within a week of the deposit. Rs.5,000/- [Rupees five thousand only] to be appropriated towards the expenses incurred by the Registry in this matter.

[P B Majmudar, J.]

[Akshay H Mehta, J.]

* Pansala.